

**FRANK R. WOLF**  
10TH DISTRICT, VIRGINIA

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:

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**Congress of the United States**  
**House of Representatives**

August 19, 2008

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The Honorable Tim Kaine  
Governor of Virginia  
State Capitol  
Richmond VA 23219

Dear Governor Kaine:

I write to share my deep disappointment regarding your nomination of Mr. James C. Dimitri for the open seat on the State Corporation Commission (SCC). As an ardent opponent of Dominion Virginia Power's proposal to build 550-kilovolt power lines across protected and historic areas of my district, I believe that the Commonwealth deserves better than a nominee who has fought to put special interest above the common interest.

In addition to advocating for these disruptive power lines, Mr. Dimitri also represented the Toll Road Investors Partnership II (TRIP II) in a successful 2003 effort to increase the ceiling on Dulles Greenway tolls from \$2 to \$3. According to the enclosed Final Order issued by the SCC, Mr. Dimitri "appeared as counsel for TRIP II." As you know, the SCC again approved a toll increase at the behest of TRIP II in 2007 to raise the ceiling from \$3 to \$4. I have been vocal in opposing efforts to extort more money from constituents in my district. Every day, moms and dads in Loudoun County are held captive by this modern-day highway robbery.

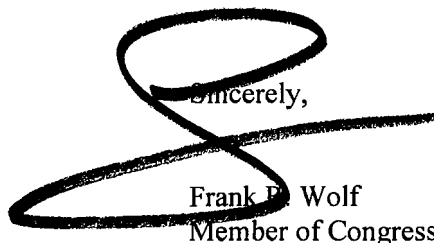
Virginians deserve an impartial SCC that will act in the consumer interest. I am further concerned that Mr. Dimitri's record as general counsel to the SCC followed by his appearing in cases before the SCC and your recent nomination to the SCC could be perceived as a "revolving door" and raise questions of the SCC's impartiality and role as a neutral arbiter. Perhaps this is yet another sign of Dominion and other special interests power in Richmond.

You know how hard I have fought against installing a major transmission route over lands in northern Virginia for which millions of federal, state, and private dollars have been spent to protect and preserve and against the toll increases on the Dulles Greenway. What message will his appointment send to the other commissioners in issuing an opinion in the Dominion case? I have no personal grievances against Mr. Dimitri, but you can understand how the nomination of Mr. Dimitri is not only an insult to my constituents but also runs counter to the interests of the Commonwealth.

Again, I want to reiterate my disappointment with your nomination of Mr. Dimitri and strongly encourage you to reconsider. The impact of the Dominion case could raise rates on households for many years to come. SCC appointments should be made in the best interests of the Commonwealth, not for the expediency of Richmond.

Best wishes.

Sincerely,



Frank P. Wolf  
Member of Congress

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, JULY 6, 2004

2004 JUL -6 PM 3:11

APPLICATION OF

TOLL ROAD INVESTORS  
PARTNERSHIP II, L.P.

CASE NO. PUE-2003-00230

Application to Revise Tolls

FINAL ORDER

On May 30, 2003, Toll Road Investors Partnership II, L.P. ("TRIP II" or the "Company"), the owner and operator of the Dulles Greenway ("Greenway"), filed an application with the State Corporation Commission ("Commission") to increase the Greenway's toll ceiling from the current \$2.00 maximum toll, which was authorized beginning in 1996, to \$3.00. By Commission orders dated June 27, 2003 (as corrected by order dated July 11, 2003), and July 30, 2003, and by Hearing Examiner's Ruling dated August 25, 2003, the Commission docketed the application, appointed a hearing examiner to conduct further proceedings, established a procedural schedule for the filing of prepared testimony and exhibits, scheduled a public hearing in Loudoun County, Virginia, scheduled an evidentiary hearing in Richmond, Virginia, and directed TRIP II to provide public notice of its application.

The Commission received over 700 electronically-submitted comments over a period of several months from persons interested in this proceeding. Most of those comments opposed an increase to the \$2.00 maximum toll. The comments also addressed, among other things, the timing of the proposed increase, the impact on usage of the Greenway, and the relative increases for drivers not traveling the entire length of the roadway. The Loudoun County Board of Supervisors adopted a resolution that opposed the increase and requested a hearing. The

Metropolitan Washington Airport Authority filed a letter with the Commission that supported the Company's application.

No person or entity filed a notice of intent to participate as a respondent in this proceeding. Public hearings were held in Loudoun County on December 3, 2003, during which seven public witnesses appeared to offer testimony. The evidentiary hearing was held in Richmond before Chief Hearing Examiner Deborah V. Ellenberg on December 9, 2003. James C. Dimitri, Esquire, and Shannon Omia Pierce, Esquire, appeared as counsel for TRIP II. Wayne N. Smith, Esquire, appeared as counsel for the Commission's Staff ("Staff"). Post-hearing briefs were filed by TRIP II and by the Staff.

On June 21, 2004, the Chief Hearing Examiner issued a Report in this matter. The Examiner's Report discusses, among other things, the background of the Greenway, the Commission's authority in this matter under Title 56 of the Code of Virginia, and the testimony provided by public witnesses, the Company, and the Staff.

The Examiner concludes that "the record clearly demonstrates the Company's need for higher revenues to meet increasing debt service obligations, to properly operate the road, to help fund the substantial capital improvements for the road that will be necessary in the future, to stabilize the Company's financial condition, and to improve the likelihood of future investor returns." Report at 16. The Examiner also finds that the "Company's current revenue stream ... is adequate to pay its current operating expenses; however, rapidly escalating debt service requirements and payment of accrued interest will soon require additional revenue." Report at 18. In addition, the Examiner concludes that the Company should conduct studies regarding three rate design matters: (i) time-of-day or congestion pricing; (ii) distance pricing; and (iii) pricing for trucks with three axles and for those with four or more axles.

Accordingly, the Examiner's Report recommends that the Commission:

- (1) approve a maximum toll rate ceiling of \$3.00;
- (2) adopt a phased maximum ceiling, below and up to which the Company has flexibility to adjust tolls as the market dictates, as follows:
  - a) a maximum ceiling of \$2.40 effective upon issuance of a Final Order herein;
  - b) a maximum ceiling of \$2.70 effective December 31, 2005; and
  - c) a maximum ceiling of \$3.00 effective July 1, 2007.
- (3) direct the Company to collect data and analyze time-of-day or congestion pricing, and report the data and results to the Staff;
- (4) direct the Company to study distance pricing including infrastructure changes and costs necessary to implement such pricing; and
- (5) direct the Company to study rate design for truck traffic.

On June 30, 2004, TRIP II filed a letter with the Commission, stating that it will not present comments or exceptions to the Examiner's Report. TRIP II also noted that it was authorized to state that the Staff will not file comments or exceptions to the Examiner's Report.

NOW THE COMMISSION, having considered the June 21, 2004, Chief Hearing Examiner's Report, the record, the pleadings, and the applicable law, is of the opinion and finds as follows. We adopt the Examiner's Report, except as modified below.

Section 56-543 of the Code of Virginia outlines the duties of the Company in this matter.

This section states, among other things, as follows:

**B. The operator shall have the following duties:**

1. It shall file and maintain at all times with the Commission an accurate schedule of rates charged to the public for use of all or any portion of the roadway and it shall also file and maintain a statement that such rates will apply uniformly to all users within any such reasonable classification as the

operator may elect to implement. These rates shall be neither applied nor collected in a discriminatory fashion; ....

Section 56-542 of the Code of Virginia provides the Commission with the authority to regulate TRIP II. Section 56-542 provides, in part, as follows:

.... The Commission also shall have the duty and authority to approve or revise the toll rates charged by the operator. Initial rates shall be approved if they appear reasonable to the user in relation to the benefit obtained, not likely to materially discourage use of the roadway and provide the operator no more than a reasonable rate of return as determined by the Commission. Thereafter, the Commission, upon application, complaint or its own initiative, and after investigation, may order substituted for any toll being charged by the operator, a toll which is set at a level which is reasonable to the user in relation to the benefit obtained and which will not materially discourage use of the roadway by the public and which will provide the operator no more than a reasonable return as determined by the Commission. .... (Emphasis added.)

We find that the Examiner's recommendation to increase the maximum toll rate ceiling to \$3.00, under the phased approach recommended in the Examiner's Report, is reasonable to the user in relation to the benefit obtained, will not materially discourage use of the roadway by the public, and will provide the Company no more than a reasonable return as determined by this Commission.

We do not, however, require the Company to prepare the three studies recommended by the Examiner. However, if TRIP II performs any such study, we direct the Company to forward the study to the Commission's Division of Public Utility Accounting forthwith. In addition, if the Company decides to implement new rate designs based on, among other things, time-of-day, distance, or truck pricing, the Company is directed to provide the Commission's Division of Public Utility Accounting a 30-day written notice of the tariff change, along with all studies and any other documents that support the rate design changes.

Accordingly, IT IS ORDERED THAT:

(1) The June 21, 2004, Report of Deborah V. Ellenberg, Chief Hearing Examiner, is hereby adopted, except as modified by this Final Order.

(2) This matter is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: James C. Dimitri, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030.